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Torture and other cruel, inhuman or degrading treatment or punishment

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, submitted in accordance with Assembly resolution 67/161.

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Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Summary

In the present report, submitted pursuant to General Assembly resolution 67/161, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment addresses issues of special concern and recent developments in the context of his mandate.

The Standard Minimum Rules for the Treatment of Prisoners, approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, are considered to be among the most important soft-law instruments for the interpretation of various aspects of the rights of prisoners. Adopted in 1955, some of the provisions of the Rules are now dated. The ongoing review process of the open-ended intergovernmental Expert Group on the Standard Minimum Rules is an opportunity to enhance understanding of the scope and nature of the prohibition against torture and other ill-treatment, the contexts and consequences in which they occur and effective measures to prevent them.

In this report, the Special Rapporteur reflects on targeted areas of review and offers a set of procedural standards and safeguards from the perspective of the prohibition of torture or other ill-treatment that should, as a matter of law and policy, be applied, at a minimum, to all cases of deprivation of liberty.

Not only do certain areas of the Rules require updating in the light of developments in international law, but Governments must renew their commitment to adequately addressing the needs of persons deprived of liberty, with full respect for their inherent dignity and their fundamental rights and guarantees, in order to enhance the implementation of the Rules and the minimum standards contained therein.

I. Introduction

1. The present report, submitted pursuant to paragraph 41 of General Assembly resolution 67/161, is the fifteenth to have been submitted to the General Assembly by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

2. The Special Rapporteur wishes to draw attention to the reports he has submitted to the Human Rights Council at its twenty-second session (A/HRC/22/53 and Adds.1-5).

II. Activities related to the mandate

A. Country visits

3. The Special Rapporteur regrets that the country visit to Bahrain planned for 2013 was postponed by the Government, for a second time at very short notice. Because the Government did not provide alternative dates, the Special Rapporteur considered the postponement to be, in effect, a cancellation. Nevertheless, the Special Rapporteur continues to engage with the Government to secure dates for a visit in 2014.

4. The Special Rapporteur welcomes the invitation from the Government of Ghana to conduct a country visit during the fourth quarter of 2013 and awaits confirmation of the specific dates proposed.

5. The Special Rapporteur regrets that country visits to Guatemala and Thailand planned for 2013 have been postponed, for the second time, at the request of the respective Governments. He is engaged with the Governments to secure dates for the fourth quarter of 2014.

6. The Special Rapporteur has insisted on a request for an invitation by the Government of the United States of America to visit the detention centre at Guantanamo Bay, Cuba, on conditions that he can accept. His request to visit United States prisons on the mainland, renewed on 15 May 2013, is still pending.

7. The Governments of Georgia and Mexico have extended invitations to visit and the Special Rapporteur is engaged with both States regarding dates. The Special Rapporteur, with support from the Anti-Torture Initiative of the Center for Human Rights and Humanitarian Law of the American University in Washington, D.C., plans to conduct follow-up visits to Tajikistan and Tunisia in 2014.

B. Highlights of presentations and consultations

8. On 13 February 2013, the Special Rapporteur gave a keynote speech on the theme "The United Nations and torture: dealing with the work of rehabilitation" at a symposium of the National Consortium of Torture Treatment Programs, held at George Washington University, Washington, D.C.

9. On 1 March 2013, the Special Rapporteur addressed the New York City Bar Association on prolonged solitary confinement.

10. Between 4 and 7 March 2013, the Special Rapporteur presented his reports to the Human Rights Council at its twenty-second session (A/HRC/22/53 and Adds.1-5) and participated in side events on the themes "Accountability for torture and extraordinary rendition", "Solitary confinement and the death row phenomenon", "Towards preventing torture and ill-treatment in health-care settings", "Impact of violence on children's right to health" and "Mental and physical health in juvenile detention".

11. On 12 March 2013, the Special Rapporteur appeared before the Inter-American Commission on Human Rights, in Washington, D.C., regarding the abuse of solitary confinement in the Americas.

12. On 22 March 2013, the Special Rapporteur participated, by video link, in a symposium on the theme "Ending the isolation: an international conference on solitary confinement and human rights", held at the University of Manitoba, Winnipeg, Canada.

13. On 9 April and 7 May 2013, the Special Rapporteur participated in events commemorating the twenty-fifth anniversary of the Committee against Torture and the adoption by the Committee, in 2012, of its general comment No. 3, on redress for victims of torture and other acts of ill-treatment, held in Washington, D.C., and Geneva.

14. On 15 April 2013, the Special Rapporteur participated in a conference on the theme "Litigation before the Committee against Torture: strengthening this important tool against torture", held at the Washington College of Law, American University, Washington, D.C.

15. On 16 April 2013, the Special Rapporteur participated in a panel discussion on the theme "Youth in solitary confinement: facts, justifications and potential human rights violations", also held at the Washington College of Law.

16. On 6 June 2013, the Special Rapporteur gave a keynote address at an event entitled "International congress on torture and cruel, inhuman or degrading treatment or punishment", held in Buenos Aires.

17. Also on 6 June 2013, the Special Rapporteur addressed, by video link, an international symposium on torture as a global challenge, held in Helsinki.

18. On 25 and 26 June 2013, the Special Rapporteur participated in two symposiums to commemorate the International Day in Support of Victims of Torture, held in Washington, D.C.

19. On 10 July 2013, the Special Rapporteur convened an expert meeting on the review of the Standard Minimum Rules for the Treatment of Prisoners, held at the University of Oxford, United Kingdom of Great Britain and Northern Ireland.

20. On 17 July 2013, the Special Rapporteur participated in a policy dialogue on poverty and the rehabilitation of survivors of torture in the United Kingdom, held at the House of Commons, in London.

III. Review of the Standard Minimum Rules for the Treatment of Prisoners

A. Overview

21. Since their adoption in 1955, the Standard Minimum Rules for the Treatment of Prisoners have retained considerable weight as an authoritative set of generally accepted principles and practices for the treatment of prisoners and the management of penitentiary institutions. Even though some provisions are now dated, the Rules continue to be vital and are considered to be among the most important soft-law instruments for the interpretation of various aspects of the rights of prisoners.

22. The Special Rapporteur notes that, whether in response to evolving threats and practices or simply because of neglect, Governments are often remiss in upholding these standards. The present report contains specific recommendations aimed at updating the Rules to ensure the humane treatment of persons in detention and advocates for their effective implementation at the global level.

23. The international and regional systems that oversee prison conditions operate largely with a view to preventing torture and other ill-treatment. The Special Rapporteur recalls that, as explained in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the term "cruel, inhuman or degrading treatment or punishment" should be interpreted so as to extend the widest possible protection against abuses.

24. In paragraph 10 of its resolution 65/230, the General Assembly requested the Commission on Crime Prevention and Criminal Justice to establish an open-ended intergovernmental expert group to exchange information on best practices and on the revision of existing United Nations standard minimum rules for the treatment of prisoners so that they reflect recent advances in correctional science.

25. The first meeting of the Expert Group established in response to that request was held in 2012 and attended by 143 representatives from 52 States (see UNODC/CCPCJ/EG.6/2012/1, para. 9). At that meeting, there was general agreement that although the Rules had stood the test of time and were universally acknowledged as the minimum standards for the detention of prisoners, some areas of the Rules needed to be reviewed (paras. 4 and 5). The consensus among the Expert Group was that any changes to the Rules should not lower any of the existing standards (para. 4). Moreover, the Expert Group identified nine preliminary areas for possible review (para. 5). The Economic and Social Council, in its resolution 2012/13, and the General Assembly, in its resolution 67/188, subsequently took cognizance of the recommendations of the Expert Group and took note of the areas identified for review. At its second meeting, held in Buenos Aires in December 2012, the Expert Group made substantive progress and identified issues for further discussion within the targeted areas (UNODC/CCPCJ/EG.6/2012/4). By its resolution 2013/35, the Council again took into consideration the nine areas identified for revision and decided to extend the mandate of the Expert Group, authorizing it to continue its work with a view to reporting to the Commission on Crime Prevention and Criminal Justice at its twenty-third session. In that same resolution, the Council invited Member States to continue to be engaged in the revision process by submitting proposals and to participate actively in the next meeting of the Expert Group, to be held in Brazil towards the end of 2013.

26. In the following sections, the Special Rapporteur examines the nine targeted areas (see General Assembly resolution 67/188, para. 6) and offers a set of procedural standards and safeguards from the perspective of the prohibition of torture and other ill-treatment that should, as a matter of law and policy, be applied, at a minimum, to all cases of deprivation of liberty.

B. Targeted review of preliminary areas: minimum set of procedural principles and safeguards

Scope and application of the Rules

27. While the Rules focus mainly on the situation of persons deprived of liberty in prisons, pretrial detention centres and police stations, in practice, States' obligations to ensure respect for human rights extend beyond police custody and prisons. The broad concept of deprivation of liberty is reflected in several international instruments, including the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in which "deprivation of liberty" is understood to mean any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority (art. 4 (2)). The language used by the Inter-American Commission on Human Rights is also enlightening. By its resolution 1/08, the Commission understands the concept of "deprivation of liberty" to encompass the following:

> Any form of detention, imprisonment, institutionalization or custody of a person in a public or private institution which that person is not permitted to leave at will ... This category of persons includes ... those persons who are under the custody and supervision of certain institutions, such as: psychiatric hospitals and other establishments for persons with physical, mental or sensory disabilities; institutions for children and the elderly; centers for migrants, refugees, asylum or refugee status seekers, stateless and undocumented persons; and any other similar institution the purpose of which is to deprive persons of their liberty.

For the purpose of this report, the broad term of persons deprived of liberty will be used to refer to all the above-mentioned situations.

28. Although Rule 95 clarifies that the scope of Rule 4 (1) extends to all persons deprived of their liberty, it is nevertheless important to make it explicit that the Rules are effectively applicable to all persons under any form of detention or imprisonment, whether for criminal or civil reasons, whether the person is detained prior to trial, while on remand or after conviction, or whether the individual is subject to so-called special security measures, administrative or corrective measures, or immigration-related measures. The Special Rapporteur urges that it be made explicit that the Rules are applicable to all forms of deprivation of liberty, without exception and regardless of the legal status of the imprisoned person. Furthermore, the Rules shall be applied (Rule 6 (1)) to all arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment, with no discrimination, on grounds of international law, for example on grounds of age, national, ethnic or social origin, cultural beliefs and practices, birth or other status, including health status, disability, gender or other identity and sexual orientation (see Human Rights Council resolution 17/19 and Human Rights

Committee general comment No. 18, para. 7), as well as labelling on grounds of psychological profile or criminal past.

29. Similarly, in line with general comment No. 2 of the Committee against Torture, the Rules apply irrespective of whether the detention facilities are run by State or private companies (paras. 15 and 17). Authorities should ensure that the Rules and the principles stipulated therein are observed in all institutions and establishments within their jurisdiction where persons are deprived of liberty. The Rules should ensure that, in cases where certain services are outsourced, the State remains responsible for the adequacy of those services.

30. Furthermore, the provisions in the Rules governing the transfer of detainees from one authority to another should be strengthened. The duties of the State should be extended to the following circumstances, among others: the transfer of prisoners from one establishment to another; judicial proceedings; and hospitals outside the confines of an institution of detention. Even when the administration of a facility is not in charge of ordering a transfer, it is nevertheless acting in an official capacity on account of its responsibility for carrying out the State's obligation to prevent torture and ill-treatment, and bears responsibility for permitting or participating in the transfer of a person to the custody or control of an individual or institution known to have engaged in torture or ill-treatment, or for not implementing adequate safeguards, in contravention of the State's obligation to take effective measures to prevent torture or other ill-treatment (Committee against Torture general comment No. 2, para. 19).

31. Thus, regardless of which authority is competent to authorize and/or execute transfers, the authority releasing the detainee, as guarantor of the right to life and humane treatment of the persons under its custody, must act with due diligence and objectivity in assessing potential risk factors and the feasibility of the transfer, and must inform the judge in charge, prior to carrying out the transfer, to give him or her the opportunity to overturn said transfer. The Rules should allow for available, suitable and effective judicial remedies to challenge transfers when it is believed that they infringe on the human rights of inmates.[1]

32. The Special Rapporteur fully endorses the proposal by the Expert Group to include a new preamble that would include a list of the fundamental principles contained in already adopted treaties and guidelines regarding treatment in detention (see Rule 3 and E/CN.15/2012/CRP.2, sect. 4). Some proposed preambles (for example, that proposed in UNODC/CCPCJ/EG.6/2012/NGO/1), however, refer to instruments that set out standards that fall short of those recognized in subsequent instruments; these earlier instruments should not, therefore, be cited in the Rules. For instance, the standards set out in the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (1991), have, in various important respects, been superseded by the higher standards set out in the Convention on the Rights of Persons with Disabilities (see A/HRC/22/53, para. 58).

33. It is crucial to recognize explicitly the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment in all circumstances. Such an explicit recognition should be included both in the preamble and, through a revision, in Rule 6, dealing with respect for inmates' inherent dignity and value as human

[1] Inter-American Commission on Human Rights, *Report on the Human Rights of Persons Deprived of Liberty in the Americas* (2011). Available from www.oas.org/en/iachr/pdl/docs/pdf/PPL2011eng.pdf.

beings. As a widely recognized set of rules addressing the administration of penal institutions, the Rules should explicitly condemn torture and ill-treatment, including participation, complicity, incitement and attempts, and certain conduct that amounts to ill-treatment, whether committed by public officials, by other persons acting on behalf of the State or by private persons (Convention against Torture, art. 4). The Rules should also declare unambiguously that no exceptional circumstances whatsoever may be relied upon to justify acts of torture and other ill-treatment by public officials, that offenders will not be tolerated and that offenders will be subject to prosecution. Naming and defining this crime will promote the aim of the Convention against Torture, inter alia, by alerting everyone to the special gravity of the crime of torture (see Committee against Torture general comment No. 2, paras. 5 and 11).

34. Furthermore, in order to ensure that the absolute prohibition of torture and other ill-treatment is enforced as an effective means of prevention, the proposed preamble and subsequent procedural rule should declare unambiguously that the State's obligation to prevent torture also applies to all persons who act, de jure or de facto, in the name of, in conjunction with or at the behest of the State party (Committee against Torture general comment No. 2, para. 7). The Committee against Torture has stated the following:

> ... an order of a superior or public authority can never be invoked as a justification of torture. ... At the same time, those exercising superior authority ... cannot avoid accountability or escape criminal responsibility for torture or other ill-treatment committed by subordinates where they knew or should have known that such impermissible conduct was occurring, or was likely to occur, and they failed to take reasonable and necessary preventive measures (general comment No. 2, para. 26).

Respect for prisoners' inherent dignity and value as human beings

35. The principle of humane treatment of persons deprived of liberty constitutes the starting point for any consideration of prison conditions and the design of prison regimes. It complements and overlaps the principle on the prohibition of torture and other ill-treatment by requiring States (and consequently the prison authorities) to take positive measures to ensure minimum guarantees of humane treatment for persons in their custodial care (see Human Rights Committee general comment No. 21, para. 3). Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule, the application of which, at a minimum, cannot be dependent on the material resources available in the State party to the International Covenant on Civil and Political Rights (para. 4). In this regard, the Inter-American Court of Human Rights has consistently affirmed that States cannot invoke economic hardship to justify imprisonment conditions that do not comply with the minimum international standards and respect the inherent dignity of the human being.[2]

36. In the light of this interpretation, the Rules should incorporate a provision urging authorities to adopt specific measures aimed at resolving the structural shortcomings of places of deprivation of liberty and earmark the resources necessary to cover basic needs and work and educational programmes. Furthermore, the Rules should set out concrete measures to be taken to ensure minimum

[2] See, for example, *Vélez Loor v. Panama*, Series C, No. 218, para. 198.

guarantees of humane treatment for persons in custodial care, including securing a prompt and effective judicial control of detention; providing adequate, accessible and appropriate health care; ensuring the availability of appropriate judicial resources and effective complaint systems; and allowing contact with the outside world and access to other activities, including for those awaiting trial.

37. As a rule of general application, the Rules should refrain from transferring inmates to a distant facility (see the Body of Principles, principle 20) or to a facility with much worse conditions as a form of punishment and from placing heavy restrictions on inmates' contact with the outside world, except as incidental to justifiable segregation or the maintenance of discipline (see Rules 57 and 60). Although the Rules highlight the importance for prisoners under sentence of maintaining contact with the outside world (see part II, sect. A), this principle should be of general application for all persons deprived of liberty, including death row inmates, to mitigate the level of suffering that is inherent to the condition of persons sentenced to death[3] and to ensure that the penitentiary system comprises treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation (International Covenant on Civil and Political Rights, art. 10 (3)). Furthermore, the Rules should guarantee that segregation and isolation are not used as a subtle form of punishment and that persons who are segregated or isolated are held in conditions applicable to the rest of the prison or penitentiary population and are subject to the full range of protections. The rationale behind this is that in some countries different forms of prison regimes and forms of segregation are used as additional measures of punishment, for example by excluding those imprisoned for life from work, educational or other activities. In some countries, prisoners serving a life sentence are confined, in virtual isolation, for up to 22 hours a day in small, cramped, unventilated cells, often in extreme temperatures, without any type of prison activities.

38. Given the excessive use of pretrial detention for long periods of time, it is absolutely necessary to ensure that all persons deprived of liberty have access to activities and can benefit from other privileges to which the general prison population is entitled. The Special Rapporteur acknowledges that it may be difficult to implement this principle, given the fairly rapid turnover of persons awaiting trial and the fact that police stations and other detention facilities may not be adapted for this purpose. As the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has noted, however, prisoners cannot simply be left to languish for weeks, possibly months, locked up in their cells (see CPT/Inf (92) 3, para. 47).

39. It is important to consider that the deprivation of the right to individual self-determination is not incidental to criminal punishment or any other form of custodial care. The current phrasing of Rule 57 can be misunderstood as meaning that deprivation of liberty results in the withdrawal of individual self-determination. It may be pertinent to redraft Rule 58 in order to clarify that only reasonable boundaries inherent to the regime in the places of detention apply. Likewise, Rule 69 could be amended to omit the reference to the conduct of a study of the

[3] United Nations Office on Drugs and Crime, *Handbook on Prisoners with Special Needs* (Vienna, 2009), pp. 159-164. Available from www.unodc.org/documents/justice-and-prison-reform/Prisoners-with-special-needs.pdf.

personality of prisoners, as potentially in conflict with the right to personal self-determination.[4]

40. As a principle of general application, the Rules should explicitly consider all inmates as subjects of rights and duties and not objects of treatment or correction. Given that mental ill-treatment may be inflicted under the name of remedial, educational, moral, spiritual and other forces and forms of assistance, the review process offers an opportunity to revisit Rule 59 in order to limit the applicable methods to those respectful of the prisoners' inherent dignity and value as human beings. In this respect, there is a need to revisit the concepts of "rehabilitation" and "re-education", as well as of "corrective" and "correctional", among others, in order to protect persons deprived of liberty from arbitrary intervention or treatment that may amount to torture or other ill-treatment.

41. The Special Rapporteur recalls the importance of introducing a rule allowing all who are deprived of their liberty to challenge expeditiously the lawfulness of the detention, e.g. through habeas corpus or *amparo*, as a safeguard for ensuring protection against torture or other ill-treatment. In all circumstances, the person deprived of liberty should have the right to inform his or her family of the arrest (Rules 44 (3) and 92) and place of detention within 18 hours (E/CN.4/2003/68, paras. 26 (g) and (i)). These rules should apply also to decisions to restrict the personal freedom of an inmate further, for instance by placing him or her in isolation or solitary confinement. In no case may a detainee's contact with the outside world be dependent on his or her cooperativeness, be used as a disciplinary sanction or form part of the sentence. In accordance with principle 19 of the Body of Principles, access to the outside world can only be denied subject to reasonable conditions and restrictions as specified by law (see E/CN.4/2004/56, para. 43).

42. Furthermore, given that safeguards are particularly undermined when the detained persons are held in incommunicado or secret detention, the Rules should place an obligation on prison authorities to ensure that persons deprived of liberty are held in officially recognized and accessible places of detention. Police station chiefs and investigating officers should be held criminally accountable for any unacknowledged custody in cases where their responsibility, including command responsibility, has been established. The Special Rapporteur recalls that whether detention is secret or not is determined by its incommunicado character and by the fact that State authorities do not disclose the place of detention or information about the fate of the detainee (see A/HRC/13/42, paras. 8-10).

43. The maintenance of an official registry has been and remains one of the fundamental safeguards against torture or other ill-treatment. Although Rule 7 provides for an obligation to ensure proper registration, it lacks a provision obliging strict adherence to registration from the very moment of apprehension and transfer to police custody; the duty to have a comprehensive and accessible record of everyone deprived of liberty (International Convention for the Protection of All Persons from Enforced Disappearance, art. 17 (3)); information regarding the time and place of arrest as well as the identity of the arresting officials; the state of health upon arrival at the detention centre; and records of when the next of kin and a lawyer were contacted and visited the detainee. It also lacks a provision requiring accurate

[4] See the recommendations contained in chap. III, on the right to personal liberty, of the report on the human rights situation in Mexico of the Inter-American Commission on Human Rights. Available from www.cidh.org/countryrep/mexico98sp/Capitulo-3.htm.

information about the custody and whereabouts of persons, including transfers, available promptly to the detainee, his or her relatives and his or her counsel (Body of Principles, principle 12), as well as registration of information on the circumstances of death of prisoners and the location of their remains (International Convention on Enforced Disappearance, art. 17 (3) (g)). Furthermore, Rule 7 (2), which obliges prison authorities to not receive a person in an institution without a valid commitment order, should be revised. The detainee should be admitted into a lawful place of detention and the person in charge of that institution is responsible for admitting the person concerned and immediately notifying a judge.

44. It is equally important that interrogation rules, instructions, methods and practices be kept under systematic review with a view to preventing cases of torture and other ill-treatment (Convention against Torture, art. 11). The Special Rapporteur recalls that counsel must be present during all interview interrogations, in their entirety. The duration of interrogations and the intervals between interrogations must be recorded (preferably with a video recorder but at least with an audio recorder) and the identity of the officials conducting the interrogation should be registered (Body of Principles, principle 23). Individuals arrested legally should not be held in facilities under the control of their interrogators or investigators for more time than is required by law to obtain a judicial warrant of pretrial detention, which, in any case, should not exceed a period of 48 hours. They should be transferred to a pretrial facility under a different authority at once, after which no further unsupervised contact with the interrogators or investigators should be permitted (see E/CN.4/2003/68, para. 26 (g)).

Conditions of detention

45. The Special Rapporteur has noted that inappropriate conditions of detention, including conditions characterized by structural deprivation and the non-fulfilment of rights necessary for a humane and dignified existence, amount to a systematic practice of inhuman or degrading treatment or punishment (E/CN.4/2004/56, para. 41, and A/HRC/13/39/Add.5, para. 230). A considerable amount of jurisprudence at the international and regional levels has also consistently found that conditions of detention can amount to inhuman and degrading treatment. Overcrowding, lack of ventilation, poor sanitary conditions, prolonged isolation, the holding of suspects incommunicado, frequent transfers from one prison to another, the non-separation of different categories of prisoners, the holding of persons with disabilities in environments that include areas inaccessible to them and the holding of persons without means of communication could constitute or lead to cruel, inhuman or degrading treatment or torture. The Rules could benefit from adhering to the requirement established by the Committee on Economic, Social and Cultural Rights regarding services in places of detention (see general comment No. 19 of the Committee, especially paras. 1, 9, 31 and 46).

46. While recognizing that penitentiary systems are almost universally severely underfunded and suffer from decades of accumulated problems, the Special Rapporteur recalls that a lack of financial resources cannot be an excuse for not refurbishing detention facilities, purchasing basic supplies and providing food[5] and medical treatment, among other things. The Rules should stress that treating all

[5] In some countries, e.g. Canada and the Dominican Republic, prison staff are served the same food given to persons deprived of liberty.

persons deprived of liberty with respect for their dignity is a fundamental and universal rule, the application of which cannot be dependent on resources.

Prisoners' safety and prison violence

47. Incidents of abuse among prisoners, from subtle forms of harassment to intimidation and serious physical and sexual attacks, are a regular occurrence in all prisons.[6] The Special Rapporteur observes that although Rule 28 (1) prohibits employing prisoners in a disciplinary capacity, in some States guards delegate the authority for maintaining discipline and protecting detainees from exploitation and violence to privileged detainees who, in turn, often use this power to their own benefit. In this context, special consideration should be given to the aggravated risk of violence that women and those from vulnerable groups, including persons with disabilities, people living with HIV/AIDS, drug-dependant individuals, lesbian, gay, bisexual, transgender and intersex persons and sex workers might suffer.

48. The Special Rapporteur recalls that inter-prisoner violence may amount to torture or other ill-treatment if the State fails to act with due diligence to prevent it (A/HRC/13/39/Add.3, para. 28). As stated by the Special Rapporteur on extrajudicial, summary or arbitrary executions, the State assumes a heightened duty of protection by severely limiting an inmates' freedom of movement and capacity for self-defence (A/61/311, para. 51). Despite the unambiguous wording of the Convention against Torture, there is a lack of awareness of the obligation of prison administration to intervene in inter-prisoner violence. The Special Rapporteur on torture notes that acquiescence in inter-prisoner violence is not simply a breach of professional responsibilities but that it amounts to consent or acquiescence to torture or other ill-treatment.

49. The fundamental role of authorities to exercise effective control over places of deprivation of liberty and ensure the personal safety of prisoners from physical, sexual or emotional abuse should be further strengthened as one of the most important obligations (see the United Nations Standard Minimum Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, para. 9, and the European Prison Rules, rule 52.2). In this respect, preventive measures include increasing the number of personnel sufficiently trained in using non-violent means of resolving conflicts (see CAT/C/BGR/CO/4-5, para. 23 (c), and A/HRC/7/3/Add.3, para. 90 (t)); promptly and efficiently investigating all reports of inter-prisoner violence and prosecuting and punishing those responsible; and offering protective custody to vulnerable individuals without marginalizing them from the prison population more than is required for their protection. Given the intrusive nature of internal surveillance devices as a control and early warning mechanism, such devices should be administered by specialized security personnel trained to strike a balance between exercising security functions and treating persons with respect for their dignity, including by demonstrating respect for and being sensitive to cultural and religious diversity.

[6] Eleventh general report on the activities of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/Inf (2001)16, para. 27).

Medical and health services

50. The State must provide adequate medical care, which is a minimum and indispensable material requirement for ensuring the humane treatment of persons in its custody. The carrying out of a prompt, independent and consensual medical examination upon a person's admission to a place of detention and after every transfer between facilities, and thereafter on a routine basis, constitutes one of the basic safeguards against ill-treatment (see Human Rights Council resolution 10/24, paras. 4 and 9, and A/52/40 (vol. I), para. 109). Among the main challenges in the provision of medical care are the lack of appropriate and sufficient medical personnel; inadequate medicine supplies and equipment; and a lack of capacity and delays in authorizing transfers to hospitals. The Special Rapporteur notes that loss of life or a deterioration in an inmate's well-being occurs because of a lack of or unreasonable delays in the provision of urgent medical care, and that these omissions on the part of the authorities can amount to ill-treatment and even torture.

51. The revision of the Rules offers a good opportunity to insist on the obligation of authorities to ensure free, fair and transparent access to a facility's medical services by providing a sufficient number of qualified, independent physicians in all facilities. The Rules should insist on the obligation to guarantee the availability of prompt, impartial, adequate and consensual medical and psychological examination upon the admission of each detainee. Medical examinations should also be provided when an inmate is taken out of the place of detention for any investigative activity, upon transfer or release and in response to allegations or suspicion of torture or other ill-treatment. Likewise, medical examinations must take place if a victim makes a complaint or upon his or her lawyer's motion, subject to judicial review in the event of delay or refusal. It is essential that medical examinations be conducted in a setting that is free of any surveillance and in full confidentiality, except for when the presence of prison staff is requested by the medical personnel. Health personnel must be free from any interference, pressure, intimidation or orders from detention authorities.

52. Medical examinations are a crucial tool in corroborating or refuting allegations of physical and psychological mistreatment. They are also integral to prevention efforts. While forensic science has made progress, the impact of medical examinations is undermined by a lack of rigorous implementation, inadequate funding, insufficient training and institutional dependencies. In many cases, health care is provided by physicians who have an almost exclusively therapeutic role or by nurses or paramedics with only basic medical training, as their focus is on curing sick detainees and examining new arrivals for contagious diseases or obvious wounds. They often lack the required expertise to properly document ill-treatment. Furthermore, reporting signs of torture raises challenges regarding perceived loyalty conflicts (to the prison administration and to the prisoner) and the responsibility to assure the safety of prisoners. In turn, persons deprived of liberty are invariably caught between a legal requirement to provide evidence to support allegations of torture or other ill-treatment and the lack of practical possibilities to produce such evidence. Records of medical examinations upon arrest or transfer often do not exist and recourse to forensic expertise is at the discretion of the supervising authority, who has ample opportunity to delay authorization until the signs of torture have disappeared.

53. The revision of the Rules offers an excellent opportunity to address these deficiencies. The Rules must include a provision obliging authorities to ensure that

medical examinations are not conducted in a superficial manner and to act diligently so as to ascertain the condition of the person examined, allowing that person to freely communicate with the physician (see CAT/OP/MEX/1, paras. 132, 133, 135, 172 and 173). Medical examinations should be thorough enough to detect any psychological consequences of torture or propensity to commit suicide. Furthermore, Rule 24 should insist on the obligation of medical personnel to detect, treat, properly document and refer to the authority responsible for investigating allegations of torture or other ill-treatment any signs of torture or other ill-treatment or any case where there are allegations or reasonable grounds to believe that torture or other ill-treatment may have occurred prior to admission or while in detention (see the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, annex, paras. 6 (a) and (c)).

54. Furthermore, the Rules should be reformulated to integrate principles of clinical independence and medical ethics, as well as principles of equality and non-discrimination: the requirement to respect the autonomy of patients, the need for the informed consent of the person concerned (Convention on the Rights of Persons with Disabilities, art. 25 (d)) and confidentiality, including with regard to HIV testing, the reproductive health of inmates and their medical files (see the United Nations Rules for the Treatment of Women Prisoners, rule 8).[7] In addition, the Rules should include an express recognition that persons deprived of liberty must always have access to adequate health care, including adequate medical, psychiatric and dental care and medication. Persons deprived of liberty should have access to a level of health care that is equivalent to that available to the general population. Currently, Rule 22 (1) already stipulates that prison health services should be organized in close cooperation with the general health administration of the community or nation, and the World Health Organization (WHO) has stated that prison health policies must be integrated into national health policies.[8] To achieve this, prison health-care services should be integrated under the ministry of health.

55. The Rules should adopt special measures to address the particular health needs of persons deprived of liberty belonging to vulnerable or high-risk groups (see para. 47 above). The Rules should allow the prison administration to facilitate the compassionate release of terminally ill persons on the ground of their health status.

56. Finally, the Special Rapporteur emphasizes that health professionals must not, under any circumstance, consent or acquiesce to torture or other ill-treatment, let alone take active part in any such ill-treatment (Principles of Medical Ethics, principles 2 and 3, and the Ethical Principles for Medical Research Involving Human Subjects). Such prohibition extends to such practices as examining detainees to determine their "fitness for interrogation", as well as to providing medical treatment to ill-treated detainees so as to enable them to withstand further abuse (E/CN.4/2003/68, para. 26 (n)). It is important that the Rules exclude the involvement and role of health-care personnel in any disciplinary or security-related measures (Rule 32 (1)). Medical personnel shall, nonetheless, closely monitor the mental and physical health of inmates undergoing punishment and visit them as deemed medically necessary or upon the request of the person deprived of liberty.

[7] World Health Organization (WHO), "WHO guidelines on HIV infection and AIDS in prisons" (Geneva, 1993).

[8] WHO, *Health in Prisons: A WHO Guide to the Essentials in Prison Health* (2007). Available from www.euro.who.int/__data/assets/pdf_file/0009/99018/E90174.pdf.

Disciplinary action and punishment

57. The Special Rapporteur observes that the Rules lack provisions and guidance on how discipline and order should be maintained in order to strike a balance between maintaining security and respecting human dignity. In this context, it is essential that the Rules provide for an obligation for prison authorities to use disciplinary measures on an exceptional basis and only when the use of mediation and other dissuasive methods to resolve disputes proves to be inadequate to maintain proper order. It is also important that punishment always be proportional to the offence for which it is established; doing otherwise would be tantamount to improperly making the nature of the deprivation of liberty harsher. Any act that may amount to a crime should be dealt with by the authorities of justice administration and not by penitentiary or prison staff. All punishments shall be duly recorded.

58. Thus, in Rule 33 it should be made explicit that the use of force and instruments of restraint (including the use of non-lethal or incapacitating weapons) should be a last resort that may be used only in exceptional circumstances, when strictly necessary as specified by law and in a manner that complies with the principle of proportionality and for the shortest possible time (see the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principles 4, 9 and 16). Rule 33 (b), which currently permits the use of restraints (including sedatives, neuroleptics or other drugs) on medical grounds, should be abolished. The Special Rapporteur has previously declared that there can be no therapeutic justification for the prolonged use of restraints and that such use may constitute ill-treatment (see A/63/175, paras. 40, 47 and 48, and A/HRC/22/53, para. 63). The use of physical restraints that are inherently inhuman, degrading or painful (such as electro-shock stun belts and restraint chairs) has humiliating and degrading effects and has been condemned and prohibited by both the Special Rapporteur and the Committee against Torture as methods of restraining those in custody (see A/55/44, para. 180 (c)). The Special Rapporteur is of the view that Rule 31 should be revised to incorporate a prohibition on punishment by suspension or restriction of water or food, as it violates international standards set out in the report of WHO on the social determinants of health and the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas of the Inter-American Commission on Human Rights (principle XI).

Lack of provisions governing searches

59. The Special Rapporteur has received numerous allegations about searches performed arbitrarily in places of deprivation of liberty with a view to punish or humiliate inmates or destroy their belongings. In this respect, the Rules must integrate principles governing searches that meet the criteria of necessity, reasonableness and proportionality (see Human Rights Committee general comment No. 16, para. 8). The Rules should place an obligation on prison authorities to ensure that searches are conducted in private by trained personnel of the same sex as the inmate, that alternate screening methods, such as scans, are developed to replace strip searches and body cavity searches and that searches are conducted by suitably trained personnel, including, where appropriate, health professionals from outside the detention facility, following authorization from the competent authorities (see the United Nations Rules for the Treatment of Women Prisoners, rule 20, and the World Medical Association Statement on Body Searches of Prisoners (1993, as revised in 2005)).

Solitary confinement

60. Prison regimes of solitary confinement often cause mental and physical suffering or humiliation that amounts to cruel, inhuman or degrading treatment or punishment. If used intentionally for purposes such as punishment, intimidation, coercion or obtaining information or a confession, or for any reason based on discrimination, and if the resulting pain or suffering are severe, solitary confinement even amounts to torture (A/66/268, paras. 76, 87 and 88). Solitary confinement should be imposed, if at all, in very exceptional circumstances, as a last resort, for as short a time as possible and with established safeguards in place after obtaining the authorization of the competent authority subject to independent review.

61. The Rules should prohibit the use and imposition of indefinite solitary confinement either as part of a judicially imposed sentence or a disciplinary measure, and alternative disciplinary sanctions should be introduced to avoid the use of solitary confinement. The Rules should also prohibit prolonged solitary confinement and frequently renewed measures that amount to prolonged solitary confinement. The Rules should establish a maximum term of days beyond which solitary confinement is considered prolonged. The Rules should explicitly prohibit the imposition of solitary confinement of any duration for juveniles, persons with psychosocial disabilities or other disabilities or health conditions, pregnant women, women with infants and breastfeeding mothers (see the United Nations Rules for the Treatment of Women Prisoners, rule 22, and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, rule 67). No prisoner, including those serving life sentence and prisoners on death row, shall be held in solitary confinement merely because of the gravity of the crime.

Investigation of all deaths in custody, as well as any signs or allegations of torture or inhuman or degrading treatment or punishment of prisoners

62. The State bears the burden of evidentiary proof to rebut the presumption that the State is responsible for violations of the right to life and for inhumane treatment committed against persons in its custody. Accordingly, the obligation on the authorities to account for the treatment of an individual in custody is particularly stringent where that individual dies (A/61/311, para. 54).[9] In this respect, the lack of a prompt, thorough and impartial investigation into allegations of torture and other ill-treatment or death in custody remains one of the major challenges in fighting impunity for such acts.

63. The decision on whether to conduct an investigation is not discretionary, but rather an obligation irrespective of whether a complaint is filed or not. The decision by the Committee against Torture in the well-known case *Blanco Abad v. Spain*, wherein a relatively short delay was held to constitute a violation of article 12 of the Convention against Torture, confirms the interpretation that a prompt investigation, in order to be effective, must be initiated within hours or, at the most, within days.[10]

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[9] Inter-American Commission on Human Rights, *Report on the Human Rights of Persons Deprived of Liberty in the Americas* (2011). Available from www.oas.org/en/iachr/pdl/docs/pdf/PPL2011eng.pdf.

[10] *Blanco Abad v. Spain*, Comm. No. 59/1996, para. 8.5. See also: Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary*, 2nd ed. (Kehl am Rhein, N. P. Engel Verlag, 2005), p. 434.

64. Although article 12 of the Convention against Torture does not exclude the possibility of the investigation being carried out by prison administration, in most cases internal investigations lack transparency and are marred by a conflict of interest. Allegations of torture and other ill-treatment should be investigated by an external investigative body, independent from those implicated in the allegation and with no institutional or hierarchical connection between the investigators and the alleged perpetrators.[11]

65. It is important that the Rules provide detailed guidance on the purpose, modalities and overall parameters of effective investigations and documentation of torture and other ill-treatment, as reflected in the Principles on Effective Investigation and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. More specifically, Rule 44 should, at a minimum, require the administration to ensure that, notwithstanding internal investigations, all complaints or reports of torture or other ill-treatment, including prison violence, threats and intimidation, as well as incidents of deaths in custody (irrespective of their cause) or shortly following release, are transmitted without screening to an external independent body for investigation. In the event that the investigation confirms allegations of torture or other ill-treatment, the victims should be guaranteed both rehabilitation and redress (see general comment No. 3 of the Committee against Torture). There should be protocols and guidelines for the prison administration about cooperating with the authorities by not obstructing the investigation and by collecting and preserving evidence. Even in the absence of an express complaint (including in the case of withdrawal of a complaint, provided that the security of the complainant is guaranteed), an investigation shall be undertaken if there are other indications that torture or other ill-treatment might have occurred (see Principles on the Effective Investigation, principle 2). Furthermore, information related to the circumstances surrounding the death of a person in custody should be made publicly accessible, considering that public scrutiny outweighs the right to privacy unless otherwise justified. The prison administration should systematically identify and collect the patterns of deaths for further examination by independent bodies.

66. The Rules should ensure that those potentially implicated in torture or other ill-treatment should immediately and for the duration of the investigation be suspended, at a minimum, from any duty involving access to detainees or prisoners because of the risk that they might undermine or obstruct investigations (see Principles on Effective Investigation, principle 3 (b)). Serious consideration should also be given to the creation of witness protection programmes that fully cover persons with a previous criminal record and staff (see E/CN.4/2004/56, para. 40).

Protection and special needs of vulnerable groups deprived of their liberty

67. Ensuring non-discrimination and special protection for vulnerable groups and individuals is a critical component of the obligation to prevent torture and other ill-treatment. The Special Rapporteur recognizes that while all people deprived of their liberty are vulnerable to neglect, abuse and mistreatment, for certain marginalized groups that vulnerability is heightened. These groups include, in addition to those identified in Rule 6 (see para. 28 above), particular categories of detainees or prisoners (e.g. sex workers, drug users, lesbian, gay, bisexual, transgender and intersex persons, prisoners who have tuberculosis or terminal

[11] *Jordan v. United Kingdom*, application No. 24746/94, para. 106.

illnesses and people living with HIV/AIDS) (see A/HRC/13/39/Add.5, paras. 231 and 257).

68. Both the Special Rapporteur and other human rights mechanisms have expressed concern about reports of sexual abuse and physical violence against homosexual and transgender prisoners (see A/HRC/19/41, paras. 34 and 36, and CAT/C/CRI/CO/2, para. 18). The Special Rapporteur has also examined the special needs of drug users in detention and penitentiary centres and the practice of denying opiate substitution treatment as a way of eliciting confessions by inducing painful withdrawal symptoms. This is a particular form of ill-treatment and possibly torture (A/HRC/22/53, para. 73).

69. In a 2008 report that focused on the situation of persons with disabilities in detention, the Special Rapporteur noted that the lack of reasonable accommodation may increase the risk of exposure to neglect, violence, abuse and ill-treatment and that if such discriminatory treatment inflicts severe pain or suffering, it may constitute torture or other form of ill-treatment (see A/63/175, paras. 38 and 53). Reasonable accommodation in the context of prisons and detention centres should be considered a prerequisite for humane treatment.

70. The Special Rapporteur notes that while the Rules recognize and address specific needs of different categories of prisoners (such as women, juveniles, persons with disabilities and foreign nationals), it fails to require the extension of special protection measures to other disadvantaged groups of detainees or prisoners. It is essential that the Rules adopt special measures aimed at protecting the rights of other disadvantaged groups of prisoners, in accordance with well-established international standards and norms (see UNODC/CCPCJ/EG.6/2012/2, p. 21). Special care must be taken to ensure that segregating members of these groups does not further marginalize them from the rest of the community or expose them to further risk of torture or ill-treatment (see, for example, the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, principle 9 (a)).

71. With respect to prisoners who use drugs, and in the context of revising Rule 22 (1), the Rules should provide for an obligation to ensure that all harm-reduction measures, including evidence-based measures for the prevention and treatment of HIV and hepatitis C, needle and syringe exchange programmes and evidence-based substance abuse treatment, are available to people who use drugs at all stages of their detention.

72. Rules 82 and 83 should be replaced with a provision that applies to all persons with disabilities. Such a provision should state explicitly that inmates with disabilities are entitled to be eligible for all programmes and services available to others, including voluntary engagement in activities and community release programmes, and to be housed in the general prison population on an equal basis with others without discrimination. It should also provide a clear articulation of certain rights enshrined in the Convention on the Rights of Persons with Disabilities: the duty to provide reasonable accommodation (arts. 5 and 14); the duty to work towards creating an accessible environment (art. 9); the duty to ensure that persons with disabilities have access to all amenities without having to rely on assistance from fellow inmates (e.g., arts. 5, 20 and 28); the duty to respect the choices of persons with disabilities and to establish effective mechanisms to support decision-making in order to enable

people with psychosocial or intellectual disabilities to exercise their legal capacity on an equal basis with others (see arts. 12 and 13).

Right of access to legal representation

73. Prompt access to legal counsel during the initial stage of detention, if necessary through legal aid, constitutes an essential safeguard against torture and other ill-treatment (see the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, para. 8). The absence of access to legal representation in the immediate aftermath of arrest and during interrogation make the extraction of a confession or other incriminating evidence the most expeditious means of "solving" a case. Regrettably, access to legal counsel during the initial stage of arrest is not often provided. Where it is available, free legal service exists only as a formality and falls short of providing substantial protection (A/HRC/13/39/Add.5, paras. 104 and 106).

74. The Special Rapporteur notes that Rule 93 does not specify that legal counsel should be granted immediately, without delay, upon apprehension.[12] Rule 93 should ensure that all persons detained, arrested or imprisoned, suspected or accused, or convicted (including death row inmates), and at all stages of the criminal justice process, including whenever there is a complaint of torture or other ill-treatment, are provided with prompt, independent and effective legal representation of the detainee's own choosing, if available, and otherwise at the State's expense. Such access must be granted without delay, interception or censorship and in full confidentiality (see the United Nations Principles and Guidelines on Access to Legal Aid, principles 3, 7 and 12, and the Body of Principles, principle 18).

75. Rule 37 should further ensure that all persons deprived of liberty are provided with adequate opportunities, sufficient time and the facilities needed to communicate and consult with legal counsel (see the Basic Principles on the Role of Lawyers, para. 8). Denial of legal representation shall be subject to independent review without delay (see the United Nations Principles and Guidelines on Access to Legal Aid, principle 9). Appropriate means, such as telephones, should be made available in all places of deprivation of liberty. Special measures should be taken to ensure meaningful access to legal representation and assistance for persons belonging to groups with particular needs and heightened vulnerability to ill-treatment (principle 10).

Complaints and independent oversight

76. During country visits, the Special Rapporteur has often criticized the lack of internal complaints bodies sufficiently detached from the authority alleged to have perpetrated the ill-treatment to be deemed impartial. In many States, these mechanisms lack independence and effectiveness. Complaints submitted by detainees are often dismissed as fabricated for the purpose of evading justice or as lacking credibility.

77. The Special Rapporteur recalls that the perceived fairness of a complaints system is indeed fundamental to its effectiveness in combating impunity and

[12] One practical measure that could be taken is the installation of prosecutors' and public defenders' offices in the immediate vicinity of police stations.

promoting a safe custodial environment.[13] Sufficient safeguards and opportunities must be in place to make a complaint and to ensure the independence, reliability, confidentiality and safety of complaint mechanisms (see, for example, the United Nations Rules for the Treatment of Women Prisoners, rule 25 (1)). Moreover, the right of detainees to file a complaint implies facilitating simple, prompt and effective recourse before competent, independent and impartial authorities against acts or omissions. Appropriate systems must be established to handle and process these complaints, ensuring access to independent lawyers and timely independent medical examination and guaranteeing the safety and security of the complainant. The Rules should place an obligation on prison authorities to take effective measures to protect complainants against any form of intimidation, reprisals and other adverse consequences. Measures in this regard include the transfer of the complainant or the implicated personnel to a different detention facility or the suspension from duty of the personnel. It is also important that the Rules integrate a provision obliging the personnel to guarantee the timely enforcement of any decision granting the remedy.

78. The overwhelming majority of complaints call for improvements in the conditions of detention and the provision of basic services or other measures that require minimal funding. They could be addressed by delegating independent, dedicated persons to receive and handle minor complaints and ensure that steps are taken within a reasonable period of time to set aside funds required to give effect to these rights.

79. Furthermore, because of disability or literacy problems, many detainees or prisoners are disadvantaged and unable to adequately fill out complaint forms. As stated by the European Court of Human Rights in *Ciorap v. Moldova*, the onus is on the State to ensure that prisoners' rights and obligations are communicated effectively to them.[14] Rule 35 should provide for the obligation to make such information available in both written and oral form, in Braille and easy-to-read formats, and in sign languages for deaf or hard-of-hearing individuals, and to display it prominently in all places of deprivation of liberty.

80. The Rules should provide for a simple and accessible mechanism for filing complaints (e.g. through the installation of telephone hotlines or confidential complaint boxes) by persons deprived of their liberty or third parties acting on their behalf (Body of Principles, principle 33 (1) and (2)). Such a mechanism should facilitate the filing of complaints, without delay or censorship, to the administration of the place of detention or penitentiary institution and to judicial authorities and other independent national authorities with investigatory and/or prosecutorial powers. The threshold for a complaint must be as low as possible, in particular in the context of detention. In this respect, the Committee against Torture has established that a formal submission or express statement of the complainant is not required and that an allegation brought in a non-bureaucratic manner, either verbally or in writing, to the attention of a State official suffices.[15] If the initial request or complaint is rejected or a response to it is unduly delayed, it should be possible to file a complaint with a judicial or other authority (Body of Principles, principle 33 (4)).

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[13] Ireland, Office of the Inspector of Prisons, *Guidance on Best Practice relating to Prisoners' Complaints and Prison Discipline* (2010), para. 3.11.

[14] *Ciorap v. Moldova*, application No. 12066/02 (2007).

[15] *Parot v. Spain*, Comm. No. 6/1990, para. 10.4.

Independent oversight

81. Regular inspection of places of detention constitutes one of the most effective preventive measures against torture. In this respect, the Special Rapporteur has stressed the importance of the universal ratification of the Optional Protocol to the Convention against Torture and the establishment of independent and professional national preventive mechanisms (see, for example, the guidelines on national preventive mechanisms (CAT/OP/12/5)).

82. The revision of Rule 55 creates an excellent opportunity to integrate the well-established, two-fold system of independent monitoring of places of detention that allows for inspections to be carried out by governmental agencies and other competent authorities distinct from those directly in charge of the administration of the place of detention or imprisonment (see the Optional Protocol, arts. 5.6, 17 and 35, and the Body of Principles, principle 29). The revised Rule 55 should make clear that the aforementioned inspection powers, as understood in the two-fold system, require judicial control to be in place. In this respect, the Rules should provide for the power of independent oversight mechanisms to have unimpeded access (on a regular and an ad hoc basis), without prior notice, to all places of deprivation of liberty, including police lock-ups, vehicles, prisons, pretrial detention facilities, security service premises, administrative detention areas, psychiatric hospitals and special detention facilities. They should be entitled to inquire and access information and documentation, including registries, and have private, unsupervised and confidential interviews with detainees of their own choosing.[16] Finally, the monitoring bodies should be able to make their findings public and follow up on the outcome (United Nations Rules for the Protection of Juveniles Deprived of their Liberty, rule 74).

Training relevant staff to implement the Rules

83. The Rules should ensure that education and information regarding the prohibition against torture or other ill-treatment are included in the training of corrections personnel, whether civilian or military, medical personnel and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. Medical personnel should receive specific training on the provisions contained in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2000). Training programmes should be envisaged to sensitize personnel to permissible methods and limitations for searches and steps to prevent and remedy prison violence with techniques that do not give rise to excessive use of force. Efforts should be strengthened to ensure that personnel adopt a gender-sensitive and age-sensitive approach (see the United Nations Rules for the Treatment of Women Prisoners) and are sensitive to the particular needs of inmates who belong to marginalized groups by, for example, providing guidance, instances and examples on principles of equality and

[16] See the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, principle 7; the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, rule 72; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 29 (2); the Optional Protocol to the Convention against Torture, arts. 14 (d) and 20 (d); and the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, principle XXIV.

non-discrimination, including in relation to sexual orientation and gender identity (see A/HRC/19/41, para. 75).

84. Provisions on the suitability, training and working conditions of qualified civilian personnel independent of police, military and criminal investigation services should be strengthened in the Rules. Authorities should take steps to designate a civilian body to conduct training programmes.

IV. Conclusions and recommendations

85. **Over the past few decades, there has been a significant increase in the worldwide prison population, placing an enormous financial burden on States. It is estimated that there are over 10 million prisoners in the world, and prison populations are growing on all five continents.[17] Imprisonment has become an almost automatic response rather than a last resort, as mirrored in increasing and disproportionate penalization, excessive use of pretrial detention, increased length of prison sentences and little use of non-custodial alternatives (see General Assembly resolution 45/110, annex). Furthermore, the penitentiary system in most countries is no longer aimed at the reformation and social rehabilitation of convicts but simply aims to punish by locking offenders away. Non-compliance with international standards in relation to conditions of detention is caused by resource constraints and by the punitive approach of most criminal justice systems. Corruption too clearly plays a negative role (see A/64/215 and Corr.1, para. 80).**

86. **The global prison crisis has an adverse impact on conditions of detention. The negative impact of the overuse of incarceration on human rights is manifold. The overuse of imprisonment constitutes one of the major underlying causes of overcrowding, which results in conditions that amount to ill-treatment or even torture. The revision of the Rules offers an excellent opportunity to revisit States' commitment to addressing the needs of persons deprived of liberty, with full respect for their inherent dignity and fundamental rights, and to adhering strictly to international human rights instruments.**

Recommendations

87. **The Special Rapporteur reiterates the importance of the principle that, except for those lawful limitations that are demonstrably necessitated by the fact of incarceration, persons deprived of their liberty shall retain their non-derogable human rights and all other fundamental freedoms (General Assembly resolution 67/166).**

88. **The Special Rapporteur calls upon all States to:**

(a) Apply the set of procedural standards and safeguards mentioned in the present report, at a minimum, to all cases of deprivation of liberty, as a matter of law and policy;

[17] International Centre for Prison Studies, *World Prison Population List*, 9th ed. (latest available information as at early May 2011).

(b) Renew their commitment to humane conditions in any place of deprivation of liberty and implement the minimum standards contained in the Rules on a global level;

(c) Keep abreast of recent developments in international norms and standards and adopt, at a bare minimum, legislation and practices that are compliant with the Rules;

(d) Spare no effort to ensure the full and effective implementation of all fundamental principles contained in international treaties, regional and international jurisprudence and instruments informed by up-to-date guidelines and standards such as the Rules;

(e) Endeavour to reduce pretrial detention and undertake comprehensive justice reforms with a view to enhance the use of alternatives to pretrial detention and custodial sentences;

(f) Declare unambiguously that treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule, the application of which, at a minimum, cannot be dependent on the material resources available in the State party;

(g) Address and prevent detention conditions, treatment and punishment of persons deprived of their liberty that amount to cruel, inhuman or degrading treatment or punishment;

(h) Allocate adequate resources, including properly trained staff, to ensure the full implementation of those standards;

(i) Make use of technical assistance offered by relevant United Nations entities and the international community to strengthen national capacities and infrastructure in the field of standard minimum rules for treatment of persons deprived of liberty;

(j) Actively engage with the open-ended intergoveramental Expert Group on the Standard Minimum Rules for the Treatment of Prisoners established by the Commission on Crime Prevention and Criminal Justice, to exchange information on good practices and challenges with a view to ensuring that the revised Rules reflect the recent advances in correctional science and best practices and to implement the Rules at the national level.

89. The Special Rapporteur calls upon the open-ended intergovernmental Expert Group to:

(a) Consider the suggestions made in the present report in the deliberations ahead and in proposed revisions to the Rules;

(b) Provide financial means to further support the revision process;

(c) Continue to welcome and ensure active participation in the review process by specialized civil society organizations.